IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Kishan Singh Bhati Vs. State of Rajasthan & Another
(S.B. Civil Writ Petition No.6124/1991)

DATE OF ORDER : August 17th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. M. Mridul, Sr. Advocate with Mr. R.N. Upadhyay for the petitioner.
Mr. O.P. Tiwari for the State.

BY THE COURT :

In this writ petition, the petitioner has prayed for certain relief with regard to his promotion from the post of Male Nurse Grade-I to the post of Assistant Nursing Superintendent, Nursing Superintendent Grade-II and Grade-I. He took voluntary retirement with effect from 31.07.1983.

According to the petitioner's own facts of the service tenure, he was initially appointed as probationer Male Nurse in the month of September 1948 in the erstwhile State of Jodhpur and was confirmed on 01.03.1949. After formation of Rajasthan, he continued in the

service as Male Nurse. The petitioner thereafter passed Punjab Nursing Registration Council Examination and became registered A-Grade Nurse. He also did matriculation on 11.06.1955. The petitioner was thereafter posted as Male Nurse Grade-I with effect from 14.05.1957.

The petitioner challenged his appointment as Male Nurse Grade-I with effect from 14.05.1957 and prayed for treating him promoted to the post of Male Nurse Grade-I with effect from 11.06.1955. Pursuant to the order dated 17.01.1976 passed in the writ petition filed by the petitioner, the petitioner was given the benefit and was treated by the Department to be appointed as Male Nurse Grade-I with effect from 11.06.1955.

According to the Rules, the petitioner was entitled to be promoted to the post of Assistant Nursing Superintendent and then to the post of Nursing Superintendent Grade-II and Nursing Superintendent Grade-I; but, when these benefits were not given to the petitioner, he filed writ petition before this Court and, in pursuance of the decision of the writ petition, the petitioner was promoted to the post of Assistant Nursing Superintendent with effect from 27.11.1969. However, the said order passed in the writ petition was appealed before the Division Bench but the appeal was dismissed. The State further challenged the dismissal of the appeal by way of SLP before the Hon'ble Supreme Court. The said SLP came to be disposed of by the Hon'ble Supreme Court vide judgment dated 19.09.1989 while

allowing the appeal in view of the decision given in Shanti Lal's case by which rules were upheld. However, the Hon'ble Supreme Court, in Civil Appeal No.4005/1989, decided on 19.09.1989, filed by the State against the judgment passed in S.B. Civil Writ Petition No.175/1978 dated 09.05.1983 as well as judgment dated 12.10.1983 passed in D.B. Civil Special Appeal No.345/1983, observed in the operative portion while allowing the appeal filed by the State as under :

> "However, we place on record the submissions of Shri Badri Dass Sharma, learned counsel for the appellant-State, that in view of the validity of the relevant service rules having been upheld, it would be appropriate for the Government now to consider the grant to respondent of such relief as he might be entitled to under the rules and that the State would do so within four months.
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> Appeal allowed. No costs."

After the judgment of the Supreme Court in the appeal filed by the State, the Superintendent, Associated Group of Hospitals, Jodhpur sent a communication dated 16.07.1990 to the Director, Medical & Health Department in which it was said that according to the decision of the Hon'ble Supreme Court the petitioner is entitled to be promoted as Assistant Nursing Superintendent with effect from 01.06.1978 and then as Nursing Superintendent Grade-II from June 1980 and then Nursing Superintendent Grade-I with effect from 01.06.1983. Upon the communication for compliance of the decision of the Supreme Court, the petitioner was accorded promotion to the post of Superintendent Grade-II with effect from 03.06.1982 by order dated 07.08.1990.

A seniority-list of Male Nurse/Compounder, as on 31.12.1978, was published vide order dated 22.09.1980 in which the petitioner's name found place at S.No.20 whereas name of Devishanker Purohit is mentioned at S.No.41 and his date of appointment as Male Nurse/Coumpounder has been shown as 16.05.1957. The petitioner's date of appointment to the post of Male Nurse/Coumpounder is shown as 11.06.1955; meaning thereby, admittedly, Devi Shanker Purohit was junior to the petitioner.

During the pendency of this writ petition, the petitioner filed an additional affidavit alongwith certain documents and prayed that similarly situated person Devi Shanker Purohit, who was admittedly junior to him, has been granted benefit of promotion to the post of Asstt. Nursing Superintendent on 03.04.1975, Nursing Superintendent on 01.02.1980 and Nursing Superintendent Grade-I on 21.05.1983. In para 5 of the additional affidavit, it is contended by petitioner that in the seniority-list dated 22.09.1980 issued by the Department his name appears at S.No.20 whereas name of Devi Shanker Purohit finds place at S.No.41 and name of another person, Banshi Lal Sharma finds place at S.No.1 and name of Shanti Lal Jain is mentioned at S.No.25. Banshi Lal Sharma and Devi Shanker Purohit were promoted to the post of Nursing Tutor after screening in accordance with Rule 6(4) of the Rules of 1965 but the petitioner was not so promoted for want of screening though he was senior than Devi Shanker Purohit. Thus both Shanti Lal Jain and Devi Shanker Purohit were promoted to the post of Nursing

Tutor prior to the petitioner; and, thereafter, Devi Shanker Purohit was promoted after his retirement vide order dated 12.04.1991 as Assistant Nursing Superintendent with effect from 03.04.1975, Nursing Superintendent Grade-II on 01.02.1980 and Nursing Superintendent Grade-I on 21.05.1983. Thus persons junior to the petitioner were pedestaled above him. The petitioner's contention is, therefore, that the respondents are under obligation at least to grant benefit of promotion to the petitioner at par with his junior Devi Shanker Purohit.

Learned counsel for the petitioner, at the time of arguments, confined his prayer that respondents may be directed to grant these benefits at par with Devi Shanker Purohit who was junior than the petitioner as per the seniority-list. It is argued by learned Senior Advocate Shri M. Mridul that the Rules of 1965 were earlier challenged before this Court by way of filing writ petition by one Banshi Lal; and, in the said writ petition, this Court finally decided the controversy vide judgment dated 17.01.1983 passed in Special Appeal No.14/1975, whereby it has been held that in so far as they provided for such a denial of the right of promotion to Compounder Gr.-I is violative of the right to equality of opportunity in the matter of employment under Articles 14 and 16 of the Constitution. Against the said judgment, however, the State preferred appeal before the Hon'ble Supreme Court and Hon'ble Supreme Court allowed the appeal and set aside the judgment of the Division Bench and the judgment of the learned Single Judge was affirmed. The said decision is reported in 1989 (3) J.T. (SC)

273, State Vs. Shantilal.

On the basis of Banshi Lal's case, one Devi Shankar Purohit also filed writ petition before this Court and the said writ petition was allowed in terms of Banshi Lal's case by the Single Bench. Against that judgment, State preferred special appeal to the Division Bench of this Court. The said appeal was registered as DB Special Appeal No.126/90. The Division Bench allowed the appeal in terms of the decision of Hon'ble Supreme Court and held that now the Hon'ble Supreme Court has reversed the finding of the Division Bench of this Court with regard to validity of the rules, therefore, the appeal filed by the State was allowed vide judgment dated 25.07.1990 and the impugned order of the learned Single Judge to the extent it declared the relevant rules unconstitutional, was set aside. However, it was directed that in view of the fact that the respondent is found suitable for the post of Sister-Tutor in the screening held on 29.10.1975, the respondent is further entitled to all consequential benefits and as far as possible, the consequential benefits shall be allowed to the respondent within a period of four months. The operative portion of order dated 25.07.1990 passed in D.B. Civil Special Appeal No.126/1990 filed by the State runs as under :

> "It is appropriate to mention here that no return to the writ petition was filed and as a matter of fact, the screening had already taken place. The screening proceedings have been placed before us, which are dated 29.10.1975. The petitioner-respondent Devi Shanker Purohit's name appeared at No.1 and he was found suitable. As the petitioner-respondent was found suitable after screening, he is entitled to all

> consequential benefits as a result of screening done on 29.10.1975.
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> This appeal is, therefore, allowed and the impugned order of the learned Single Judge to the extent it declared the relevant Rules unconstitutional, is set aside. However, it is further directed in view of the fact that the petitioner-respondent is found suitable for the post of Sister-tutor. The petitioner respondent is further entitled to all consequential benefits. This is the natural and necessary consequence of the screening of the petitioner-respondent. As far as possible, the consequential benefits shall be allowed to the respondent within a period of four months."

Learned counsel for the petitioner argued that in appeal filed by the State against the judgment of the Division Bench in the case of the petitioner while upholding the rules, the Hon'ble Supreme Court observed in the order that it would be appropriate for the Government now to consider the grant of such relief as he might be entitled to under the rules within four months and, in case of Devi Shanker also while following the decision of the Supreme Court it is ordered that he may be granted benefit of promotion in view of the fact that Devi Shanker Purohit was screened and was found suitable for the post of Sister-Tutor, therefore, the respondents were under obligation to consider the case of Devi Shanker Purohit and petitioner for promotion because for considering the candidature of both the persons similar orders were passed by the Supreme Court in the appeal filed against the judgment in the case of petitioner Kishan Singh Bhati and by the Division Bench of this Court in appeal filed by the State against the judgment passed in favour of Devi Shankar Purohit by the Single Bench. Unfortunately, in compliance of the judgment, the petitioner

was promoted to the post of Male Nurse Grade-II with effect from 03.06.1983 whereas Devi Shanker Purohit was given benefit of promotion, first on the post of Assistant Nursing Superintendent with effect from 03.04.1975 and Nursing Superintendent Grade-II with effect from 01.02.1980 and on the post of Nursing Superintendent Grade-I on 21.05.1983 and this order was made in compliance of the order passed on 25.07.1990 whereas in the case of the petitioner in pursuance of the judgment rendered by the Supreme Court the petitioner was granted the benefit of promotion only to the post of Nursing Superintendent Grade-II with effect from 03.06.1982 vide order dated 07.08.1990. However, the fact remains that for grant of promotion the petitioner is senior than Devi Shanker Purohit. But, Devi Shanker Purohit was granted benefit of three promotions, one to the post of Assistant Nursing Superintendent and then to the posts of Nursing Superintendent Grade-II and Nursing Superintendent Grade-I. Therefore, it is obvious that the petitioner's case is at par with the case of Devi Shanker Purohit and both of them were working in the one cadre of Male Nurse Grade-I/Compounder Grade-I, as is evident from the seniority-list Annex.-10. The respondents cannot discriminate the case of the petitioner for the purpose of granting promotion from the case of Devi Shanker Purohit who was admittedly junior to the petitioner in the cadre.

Per contra, learned counsel for the respondents contended that Devi Shanker Purohit was granted benefit as per the order passed by

the Division Bench in which it has been observed that in the screening proceedings Devi Shanker Purohit was found suitable in the year 1975, therefore, while treating him as Nursing Tutor further promotions were granted whereas the petitioner was not granted such benefit because he was holding the post of Male Nurse Grade-I at the time of superannuation and as such no specific order was passed by the Supreme Court for considering his candidature for promotion. The petitioner was granted benefit of promotion in accordance with amendment of Schedule-I to the Rules, which was made on 03.06.1982, therefore, the petitioner is not entitled to get relief in this writ petition for promotion at par with Devi Shanker Purohit inasmuch as Male Nurse Grade-I were held to be entitled to be promoted to the post of Nursing Superintendent Grade-II.

I have considered the rival submissions made by both the parties.

During the course of the arguments, learned counsel for the petitioner confined his submissions that the petitioner's case may be considered at par with the case of Devi Shanker Purohit who was granted promotion even to the higher post than the petitioner though he was junior in the cadre of Male Nurse Grade-I. Certain admitted facts in this case are required to be observed. The petitioner was admittedly working on the post of Male Nurse Grade-I and his date of appointment was 11.06.1955. Name of the petitioner appeared at S.No.20 in the seniority list Annex.-10 issued by the Department on

20.09.1980. Similarly, Devi Shanker Purohit was appointed as Male Nurse Grade-I on 16.05.1957 and his name appeared at S.No.41 in the seniority list. It is evident from Annex.-2 that the Superintendent, Associated Group of Hospitals, Jodhpur sent communication dated 16.07.1990 after the judgment of the Hon'ble Supreme Court dated 06.08.1989 in which it was specifically recommended that Kishan Singh Bhati (petitioner) is required to be promoted to the post of Assistant Nursing Superintendent from 01.06.1978 and to the post of Nursing Superintendent Grade-II from 01.06.1980 and then Nursing Superintendent Grade-I from 01.06.1983. But, unfortunately, though it was observed by the Superintendent, Associated Group of Hospitals, Jodhpur that the petitioner is entitled to promotion upto Nursing Superintendent Grade-I but the State Government passed order for promotion only to the post of Nursing Superintendent Grade-II while treating him as Male Nurse Grade-I. In my opinion, it is totally arbitrary and discriminatory action of the Government because according to rules which were in existence prior to 03.06.1982 the petitioner was to be considered on the post of Assistant Nursing Superintendent at par with his junior Devi Shanker Purohit; and, thereafter he was to be given subsequent promotions. It is evident from the order Annex.-R/1 filed by the respondents that the petitioner was granted only one promotion, that too, from the post of Male Nurse Grade-I to the post of Nursing Superintendent Grade-II and the basis for granting this promotion is that upon the amendment in the

Schedule-I on 03.06.1982, when the said Schedule was changed, Male Nurse Grade-I were held to be eligible for promotion to the post of Nursing Superintendent Grade-II.

The petitioner's case was required to be considered for promotion to the post of Assistant Nursing Superintendent and then to the posts of Nursing Superintendent Grade-II and Nursing Superintendent Grade-I at par with the case of Devi Shanker Purohit who was junior to the petitioner in the cadre vide Annex.-10. But, this was not done by the Department. In the reply also no cogent reasons have been given for non-eligibility for considering the case of the petitioner for promotion at par with Devi Shanker Purohit, therefore, this petition deserves to be allowed.

Now, in the year 2007, it is not appropriate to send back this case to the Medical and Health Department for considering the case of the petitioner for granting promotion to the petitioner at par with Devi Shanker Purohit, who was admittedly junior to the petitioner.

As a result of the above discussion, this writ petition is allowed. While holding that denial of promotion to the petitioner at par with Devi Shanker Purohit is arbitrary and in violation of Article 14 of the Constitution of India, therefore, the petitioner is entitled for all benefits of promotion which were extended to Devi Shanker Purohit, which is evident from the additional affidavit filed by the petitioner in which it is categorically stated that after the decision of the Hon'ble Supreme Court in the State appeal filed against the judgment passed

in the petitioner's case and after the judgment of the Division Bench in the case of Devi Shanker Purohit, both were at par in the cadre of Male Nurse Grade-I, therefore, the respondents are directed to grant promotion to the petitioner to the post of Assistant Nursing Superintendent with effect from 03.04.1975 and to the post of Nursing Superintendent Grade-II with effect from 01.02.1980 and to the post of Nursing Superintendent Grade-I from 21.05.1983 which have been granted to his junior Devi Shanker Purohit vide order dated 12.04.1991 and while granting these benefits of promotion to the petitioner, his fixation shall be made in accordance with law and arrears, if any, shall be granted to the petitioner. Consequently, the pension shall also be revised within a period of six months from the receipt of a copy of this order.

(Gopal Krishan Vyas) J.